

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

TIMOTHY ARTHUR BERRY,

Plaintiff,

v.

PETER ARMSTRONG,

Defendant.

Case No. 16-10176

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

**ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING
PLAINTIFF'S COMPLAINT**

On January 19, 2016 Plaintiff Timothy Arthur Berry filed his *pro se* complaint against Defendant Peter Armstrong, a child custody investigator. ECF No. 1. In the complaint Berry claims that Defendant Armstrong aided and abetted the state court judge, Judge Van Allsburg in violating a number of his constitutional rights by participating in a child custody hearing on December 28, 2015. *Id.* This is one of at least eleven cases filed by Berry relating to an ongoing custody dispute over which Judge Van Allsburg presides. *See Berry v. Van Allsburg*, 15-cv-14380 (E.D. Mich. Dec. 17, 2015) (Ludington, J.); *Berry v. Van Allsburg*, 15-cv-10005 (E.D. Mich. Jan 4, 2016) (Ludington, J.); *Berry v. Morris*, 16-cv-10170 (E.D. Mich. Jan 19, 2016) (Ludington, J.); *Berry v. Morris*, 16-cv-10172 (E.D. Mich. Jan 19, 2016) (Ludington, J.); *Berry v. Trese*, 16-cv-10174 (E.D. Mich. Jan 19, 2016) (Ludington, J.); *Berry v. Trese*, 16-cv-10175 (E.D. Mich. Jan 19, 2016) (Ludington, J.); *Berry v. Ottawa County Jail*, 16-cv-10177 (E.D. Mich. Jan 19, 2016) (Ludington, J.); *Berry v. Smith*, 16-cv-10293 (E.D. Mich. Jan 28, 2016) (Ludington, J.); *Berry v. Ludington*, 16-cv-10395 (E.D. Mich. Feb. 4, 2016) (Lawson, J.); *Berry*

v. Trese, 16-cv-10597 (E.D. Mich. Feb. 18, 2016) (Ludington, J.); *Berry v. Van Allsburg*, 16-cv-10598 (E.D. Mich. Feb 18, 2016) (Ludington J.).

Berry applied for permission to proceed *in forma pauperis*, which was granted. ECF No. 6. The case was referred to Magistrate Judge Patricia T. Morris for general case management. ECF No. 5.

Pursuant to the IFP screening procedure set forth in 28 U.S.C. § 1915(e)(2)(B), a complaint must be dismissed *sua sponte* “if the court determined that... the action or appeal (i) is frivolous or malicious, (ii) fails to state a claim upon which relief can be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” *Id.* Pursuant to that rule, on February 7, 2016 Judge Morris issued a report recommending Berry’s complaint be *sua sponte* dismissed for failing to state a claim upon which relief may be granted *See* Rep. & Rec. 6-7, ECF No. 7. In recommending dismissal, Judge Morris found that even assuming Berry had alleged a claim under 42 U.S.C. § 1983, Defendant Armstrong was not subject to suit under § 1983 because Berry had not alleged that Armstrong was a state actor or acting under color of state law. She further concluded that Berry had not sufficiently specified what actions Defendant Armstrong took that violated his rights, noting that in civil rights suits each individual defendant can only be accountable for his or her own actions. *See Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) (“[A] plaintiff must plead that each Government-official defendant, through the official’s own individual actions, has violated the Constitution.”); *Binay v. Bettendorf*, 601 F.3d 640, 650 (6th Cir. 2010) (“Each defendant’s liability must be assessed individually based on his own actions.”).

Although the Magistrate Judge’s report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report,

neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 7, is **ADOPTED**.

It is further **ORDERED** that Plaintiff Timothy Berry's Complaint, ECF No. 1, is **DISMISSED with prejudice**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: March 4, 2016

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on March 4, 2016.

s/Michael A. Sian
MICHAEL A. SIAN, Case Manager